



Comptroller of the Currency
Administrator of National Banks

Washington, DC 20219

Corporate Decision #2001-16 July 2001

DECISION OF THE COMPTROLLER OF THE CURRENCY ON THE APPLICATIONS BY FIRST USA BANK, N.A., WILMINGTON, DELAWARE, BANK ONE, N.A., COLUMBUS, OHIO, BANK ONE ARIZONA, N.A., PHOENIX, ARIZONA, BANK ONE COLORADO, N.A., DENVER, COLORADO, BANK ONE ILLINOIS, N.A., SPRINGFIELD, ILLINOIS, AND BANK ONE INDIANA, N.A., INDIANAPOLIS, INDIANA, TO PURCHASE A CREDIT CARD PORTFOLIO FROM WACHOVIA BANK, N.A., WINSTON-SALEM, NORTH CAROLINA AND SUBSTANTIALLY ALL OF THE ASSETS OF FIRST NATIONAL BANK OF ATLANTA, NEW CASTLE, DELAWARE

JUNE 14, 2001

I. INTRODUCTION

On April 13, 2001, First USA Bank, N.A., Wilmington, Delaware (“FUSA”), Bank One, N.A., Columbus, Ohio (“Bank One Columbus”), Bank One Colorado, N.A., Denver, Colorado, Bank One Illinois, N.A., Springfield, Illinois, Bank One, Arizona, N.A., Phoenix, Arizona, and Bank One, Indiana, N.A., Indianapolis, Indiana (collectively “Purchasers”) applied to the Office Comptroller of the Currency for approval to purchase a credit card portfolio from Wachovia Bank, N.A., Winston-Salem, North Carolina (“WB”), and to purchase substantially all the assets of First National Bank of Atlanta, New Castle, Delaware (“FNBA”) under 12 U.S.C. §§ 24 (Seventh), 215(c) and 1828(c).¹

Purchasers are subsidiaries of Bank One Corporation (“Bank One”), a registered multi-bank holding company. FUSA currently houses Bank One’s credit card business. The receivables and certain other assets and liabilities related to this business are held in a participation pool jointly owned by all Purchasers. WB holds a 95 percent interest in FNBA’s credit card portfolio and is considered a joint seller of the FNBA assets. This transaction involves the Purchasers’ acquisition of approximately \$8 billion of assets of FNBA and WB (collectively “Sellers”), consisting primarily of credit card-related assets and liabilities. This transaction does not involve the sale of bank offices.

¹ First National Bank of Atlanta operates under the name Wachovia Bank Card Services.

Sellers are subsidiaries of Wachovia Corporation (“Wachovia”), a registered multi-bank holding company. FNBA currently houses Wachovia’s credit card business, which comprises FNBA’s only line of business and currently accounts for substantially all of FNBA’s assets. FNBA has sold participation interests in the credit card receivables to its affiliate, WB.

All parties to this transaction are FDIC-insured and members of the Bank Insurance Fund. The applications were based on an agreement entered into between FUSA and FNBA on April 8, 2001. As of December 31, 2000, Bank One had consolidated total assets of approximately \$269.3 billion, consolidated total deposits of approximately \$167.1 billion, and consolidated total equity capital of approximately \$18.6 billion. As of the same date, Wachovia had consolidated total assets of approximately \$74 billion, consolidated total deposits of approximately \$44.4 billion, and consolidated total equity capital of approximately \$18.6 billion.

The OCC received comments from two community groups opposing the applications on competitive and Community Reinvestment Act (“CRA”) grounds. The commenters also expressed concern that the transaction would negatively impact customer service. The competitive issue is addressed below under Section II.A.1. CRA concerns and customer service are addressed under Section II.B.3.

II. STATUTORY AND POLICY REVIEWS

A. The Bank Merger Act.

The Bank Merger Act requires the OCC’s approval for any transaction where all or substantially all of the assets of a depository institution are being acquired and the acquiring institution will be a national bank. The OCC generally may not approve a transaction that would substantially lessen competition. Additionally, the Act also requires the OCC to consider the financial and managerial resources and future prospects of the existing and proposed institutions, and the convenience and needs of the community to be served.

National banks have long been authorized to purchase the assets and assume the liabilities of other depository institutions as an activity incidental to the business of banking under the authority of 12 U.S.C. § 24 (Seventh).² Where all or substantially all of the assets of a depository institution are being acquired, the transaction must be reviewed for compliance with the Bank Merger Act, 12 U.S.C. § 1828(c). Further, because neither Seller is a member of the Savings Association Insurance Fund, 12 U.S.C. § 1815(d)(3) is not applicable to this transaction. Finally, the transaction must be reviewed in the context of the OCC’s responsibilities under the Community Reinvestment Act (“CRA”). 12 U.S.C. §§ 2903(a)(2), 2902(3)(E).

² See, e.g., City National Bank of Huron v. Fuller, 52 F.2d 870, 872 (8th Cir. 1931).

1. Competitive Analysis.

The OCC recognizes that the relevant geographic market for credit card services is national in scope.³ As of December 31, 2000, published data estimated the outstanding credit card receivables for the 50 largest issuers of MasterCard and Visa to be approximately \$450 billion.⁴ FUSA ranked third with outstanding credit card receivables of \$67 billion. WB ranked twelfth with \$8 billion in outstanding credit card receivables.⁵

While competition among the largest issuers is intense, the consummation of this transaction will not have a significant adverse effect on competition in the relevant market. Based on year-end 2000 data, the acquisition of the Sellers' credit card portfolio would provide FUSA a modest market share increase from 15 to 16 percent, and would cause FUSA to become the second largest issuer of credit cards. Overall, competition in the market would remain largely unaffected by the acquisition. In addition, the Department of Justice reviewed the proposals and advised the OCC that the transaction presents no significant adverse effect on competition.

2. Financial and Managerial Resources.

The Bank Merger Act requires the OCC to consider the "financial and managerial resources and future prospects of the existing and proposed institutions...."⁶ Bank One provides substantial financial and managerial support for the transaction. The holding company is the fifth largest in the nation and controls approximately \$269 billion in assets. Purchasers are each well-capitalized and well-managed, providing ample financial and managerial support for the transaction. Thus, we find the financial and managerial resources factor is consistent with approval of the purchase and assumption applications.

3. Convenience and Needs.

This proposal will not have an adverse impact on the convenience and needs of the communities to be served. The acquisition will not result in a reduction in products or services to the general public. Accordingly, we believe the impact of this purchase and assumption on the convenience and needs of the communities to be served is consistent with approval of these applications.

In light of the recently announced merger agreement between First Union and Wachovia, two

³ See Corporate Decision 98-14 (February 10, 1998); Corporate Decision 97-23 (April 9, 1997). The Board of Governors of the Federal Reserve System has also recognized that the relevant geographic market for credit card products and services is national in scope. See Banc One Corporation, 83 Federal Reserve Bulletin 602 (1997).

⁴ See *The Nilson Report*, Issue No. 732 at 8 (Jan. 2001).

⁵ *Id.*

⁶ 12 U.S.C. § 1828(c)(5).

commenters raised concerns about potential conflicts in the terms of agreements executed between First Union and MBNA and between Bank One and Wachovia regarding their credit card portfolios. These concerns involve private contractual disputes that must be resolved by the parties and, if necessary, the courts. Further, there is no evidence indicating that this potential dispute would adversely impact customer access to credit card products and services. The OCC does not, therefore, believe this concern warrants a delay or denial of the applications.

B. Community Reinvestment Act

The CRA requires the OCC to take into account each applicant bank's record of helping to meet the credit needs of its entire community, including low- and moderate-income neighborhoods, when evaluating certain applications.⁷ The types of applications that are subject to review under the CRA include purchase and assumption transactions between insured depository institutions.⁸ The OCC considers the CRA performance of each depository institution involved in the transaction. Under the CRA regulation, when evaluating a bank's performance, the OCC considers the institution's capacity and constraints, including the size and financial condition of the bank and its subsidiaries.

Bank One Columbus' most recent CRA Performance Evaluation, dated March 31, 2000, reflected a "Satisfactory" rating.⁹ That Performance Evaluation indicated that a review of Home Mortgage Disclosure Act ("HMDA") data, including lending ratios, demographic characteristics, denial rates, denial disparity rates, market share data, and the bank's lending record to minority areas, did not disclose any lending patterns suggestive of illegal discrimination. No violations of the substantive provisions of anti-discrimination laws or regulations were disclosed.

Bank One, Illinois, N.A.'s most recent CRA Performance Evaluation, dated December 31, 1999, reflected a "Satisfactory" rating. That Performance Evaluation indicated that a review of HMDA data, including lending ratios, demographic characteristics, denial rates, denial disparity rates, market share data, and the bank's lending record to minority areas, did not disclose any lending patterns suggesting illegal discrimination. No violations of the substantive provisions of anti-discrimination laws or regulations were disclosed.

The OCC rated Bank One, Indiana, N.A. "Satisfactory" in its most recent CRA Performance Evaluation, dated June 30, 1999. That Performance Evaluation found no unexplained gaps in the geographic distribution of the bank's home purchase, home improvement, home refinance, and small business loans that could raise questions regarding discrimination. No violations of the substantive provisions of anti-discrimination laws or regulations were found.

⁷ 12 U.S.C. § 2903.

⁸ 12 C.F.R. 25.29(a)(3) (2001).

⁹ Except for FUSA, the Bank One institutions discussed in this section were evaluated using criteria relative to lending, investments, and services.

Bank One, Arizona, N.A.'s most recent CRA Public Evaluation, dated June 30, 1999, reflected a "Satisfactory" rating. That Performance Evaluation found no unexplained gaps in the geographic distribution of the bank's home purchase, home improvement, home refinance, and small business loans that could raise questions regarding discrimination. No violations of the substantive provisions of anti-discrimination laws or regulations were noted.

Bank One, Colorado, N.A. received an "Outstanding" rating from the OCC in its most recent CRA Performance Evaluation, dated March 31, 2000. The Performance Evaluation indicated a review of HMDA data, including lending ratios, demographic characteristics, denial rates, denial disparity rates, market share data, and the bank's lending record to minority areas did not disclose any lending patterns suggesting illegal discrimination. No violations of the substantive provisions of anti-discrimination laws or regulations were reported.

The OCC rated FUSA "Satisfactory" in its most recent CRA Performance Evaluation dated June 14, 1999.¹⁰ Since FUSA is a limited purpose bank, the OCC evaluated its CRA performance by reviewing the bank's level and nature of qualified investments, community development lending and community development services. A fair lending examination of the bank, performed in conjunction with the CRA review, analyzed the credit scoring system used by the bank in evaluating applications for credit. No fair lending concerns were noted.

WB's most recent CRA Performance Evaluation, dated June 30, 1997, reflected an "Outstanding" rating. The bank was evaluated using the twelve assessment factors that were contained in the prior version of the OCC's CRA regulation. See 12 C.F.R. 25.7 (1997).¹¹ That Performance Evaluation indicated the OCC conducted a comparative file review of minority denials and white approvals in order to determine if similarly situated applicants received similar results from the bank's underwriting process. The OCC did not detect any instances of disparate treatment or other illegal credit practices.

The most recent CRA Performance Evaluation for FNBA dated June 30, 1997, reflected a "Satisfactory" rating. Since FNBA is a limited purpose bank, the OCC evaluated its CRA performance by reviewing the bank's level of community development loans, investments and services. The bank's fair lending examination during the fourth quarter of 1996 did not disclose any violations of antidiscrimination laws and regulations.

Public Comments

¹⁰ On July 19, 1999, FUSA merged into FCC National Bank with the resulting bank named FUSA. Accordingly, the OCC has relied on the findings of the June 14, 1999, Public Evaluation for FCC National Bank. FUSA's prior CRA Public Evaluation, dated January 1, 1997, reflected a "Satisfactory" rating.

¹¹ The OCC is currently evaluating the CRA performance of WB using criteria relative to the bank's lending, investments, and services. The OCC will also be conducting a concurrent fair lending review.

The OCC received comments from two community organizations.¹² The OCC's review and investigation of the concerns raised by the commenters disclosed no information that was inconsistent with approval.¹³

One commenter expressed concerns with the level of small business lending at eight Bank One institutions and at WB. Specifically, the commenter noted the percentage of loans to low-income areas was less than to upper-income areas. However, two of the Bank One institutions cited by the commenter no longer exist, and two are not parties to this transaction. With respect to the four remaining institutions, in almost all of the counties at issue, the 1999 HMDA data indicate that the percentage of small business loans made in low-income census tracts was comparable to or better than that of other lenders. In addition, the most recent CRA Performance Evaluations for the Bank One banks deemed the overall geographic distribution of small business loans to be at least adequate.

WB's most recent Performance Evaluation also did not note any concerns with respect to the geographic distribution of small business loans. In all but one of the seven MSAs cited by the commenters, the 1999 HMDA data indicate that WB's percentage of small business loans to low-income census tracts met or exceeded the percentage experienced by all lenders in that MSA.¹⁴ OCC examiners will evaluate WB's small business lending record during the current CRA performance evaluation.

One commenter raised concerns about mortgage lending by WB and its subsidiary, Wachovia Mortgage. The commenter provided denial disparity ratios in conventional home purchase mortgages to African Americans versus to whites in five Metropolitan Statistical Areas ("MSAs"). This same commenter also identified five MSAs where WB's market share of conventional home purchase loans to African Americans was less than that to whites. It is important to note that HMDA data alone are inadequate to provide a basis for concluding that a bank is engaged in lending discrimination or in indicating whether its level of lending is sufficient. HMDA data do not take into consideration borrower capacity, housing prices, and other factors relevant in each of the individual markets and do not illustrate the full range of the bank's lending activities or efforts. Nevertheless, denial disparity ratios are of concern to the OCC and are routinely evaluated in fair lending examinations.

While the OCC was unable to verify the denial ratios provided by the commenters, the OCC confirmed that the denial rate for African Americans was higher than the denial rate for whites

¹² While the comments were received after the close of the comment period, the OCC investigated the concerns raised by the commenters.

¹³ One commenter expressed concern with the "Needs to Improve" CRA rating for First USA Financial Services, Salt Lake City, Utah ("FUSA-Utah"), assigned by the FDIC on June 1, 1999. While Bank One owns 55% of FUSA-Utah, FUSA-Utah is not a party to this transaction and is in liquidation.

¹⁴ The 1999 HMDA data indicate that in the Atlanta MSA, 2% of WB's small business loans were in low-income areas, whereas 4% of all lenders' small business loans were in low-income areas.

in each of the five MSAs. The OCC also found that WB's market share of conventional home purchase loans to African Americans in the five MSAs identified by the commenter was less than the market share of conventional home purchase loans to whites. However, in all but one of the five MSAs identified by the commenter, WB's percentage of lending to African Americans was similar to or greater than the level experienced by all lenders in that MSA.¹⁵ As mentioned previously, OCC examiners will be conducting a fair lending review in conjunction with Wachovia's CRA performance evaluation currently underway. The comments regarding lending disparities and the information that the OCC confirmed have been shared with the examiners conducting the fair lending examination.

One commenter also raised concerns with WB's recently announced branch closings in Florida. WB's last CRA Performance Evaluation noted that the bank had adopted and adhered to a branch closing policy. That policy is used to measure the impact of office closures and the reduction in services on each community. It requires bank personnel to consider if bank services were reduced in a community and to offset the reduction if possible. As part of the closing procedures, bank personnel contact local community and governmental leaders to explain the change and listen to their assessment of the impact. OCC examiners confirmed that the branch closing policy remains intact and will assess the bank's record of opening and closing branches during the performance evaluation in progress.

Conclusion Regarding Record of CRA Performance

Based on the banks' records of CRA performance, discussed above, we find that approval of the transaction is consistent with the Community Reinvestment Act.¹⁶

Request for Extension of Comment Period and Disposition of Hearing Request

One commenter requested that the OCC extend the public comment period on this transaction. The OCC is not granting an extension of the comment period, because the commenters did not demonstrate that additional time was necessary to develop factual information, and the OCC was unaware of any extenuating circumstances.¹⁷

The other commenter requested the OCC conduct a hearing. After careful consideration, the OCC has determined not to conduct a hearing on this merger application.

¹⁵ The 1999 HMDA data indicate that in the Charleston-North Charleston MSA, 1.5% of WB's and Wachovia Mortgage's conventional home purchase loans were to African Americans, whereas 9.1% of all lenders' conventional home purchase loans were to African Americans. The OCC also notes that WB and Wachovia Mortgage received a total of only 14 conventional home purchase applications from African Americans in that MSA. In addition, WB's and Wachovia Mortgage's denial rate to African Americans of 28.6% was less than the denial rate of 62.8% experienced by all lenders in that MSA.

¹⁶ In addition, the OCC notes that the concerns raised by the commenters are not directly related to this transaction, which is limited to the sale of credit card receivables.

¹⁷ See 12 C.F.R. 5.10(b)(2)(ii), (iii).

The general standard the OCC applies to determine whether to hold a public hearing is contained in 12 C.F.R. 5.11, which provides:

The OCC generally grants a hearing request only if the OCC determines that written submissions would be insufficient or that a hearing would otherwise benefit the decisionmaking process. The OCC also may order a hearing if it concludes that a hearing would be in the public interest.

The party requesting the hearing did not describe the nature of the issues or facts to be presented and did not provide reasons why a written submission would be insufficient. In addition, the OCC had no other reason to believe that testimony would provide the OCC with relevant information on the pending application.

IV. CONCLUSION AND APPROVAL

For the reasons set forth above, including the representations and commitments made by the applicants, we find that the proposed purchase and assumption transaction is legally authorized under 12 U.S.C. §§ 24(Seventh), 215c and 1828(c). All of the banks are in satisfactory condition and the proposal is consistent with the Community Reinvestment Act. Accordingly, these applications are hereby approved. Additionally, for the reasons set forth above, the requests for a public hearing and for an extension of the comment period are denied.

-signed-
Julie L. Williams
First Senior Deputy Comptroller
and Chief Counsel

June 14, 2001
Date

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